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From: District Attorney Kimberly R. H. Lewis  
Merced County District Attorney's Office  
550 W. Main Street  
Merced, CA. 95340

Date: June 13, 2019

Re: Officer Involved Shooting Case No. MCDA # 047-532571  
Shooting Officer(s): MPD Officer Nate McKinnon #162  
Suspect: Johnny Carnell MATHIS (DOB: [REDACTED])

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The District Attorney's Office has completed an independent review of the above referenced officer involved shooting which occurred on February 12, 2019. This memorandum serves only to address the issues of evidence to support the filing of a criminal action in connection with Officer McKinnon's discharge of his firearm at the suspect, Johnny Cornell MATHIS and does not take into account any issues of civil liability, tactics, training, departmental policies or procedures. For the reasons set forth, we conclude that this shooting was lawful and justified.

The Merced County District Attorney's Office completed the criminal investigation and reviewed written reports and other information including:

- Merced County DA's Office (MCDA) report number : #047-532571
- Body worn camera recordings
- Vehicle dash cam footage
- Toxicology report
- Autopsy report
- DOJ forensic and ballistic report
- Dispatch audio and written logs
- Photographs
- Cellular phone data
- Audio and video recordings of victim, witness and officer interviews;
- Surveillance camera footage from Malibu boats;
- Search Warrants

This report details the steps taken to independently investigate this critical event and describes how the conclusion was reached.

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## **I. FACTUAL SUMMARY**

On February 12, 2019 at 7:46:48 p.m., the Merced County Sheriff's Office received a 911 call from a citizen that there was a vehicle parked between her residence and her neighbor's home. The reporting person indicated that the vehicle had been there approximately 5 minutes with the motor running. The reporting person said her neighbor heard screaming coming from the vehicle.

Merced County Sheriff's Deputy Sohal responded to the scene. He found a vehicle in the location the reporting person described, the 2100 block of West Highway 140, Merced County. An adult male was standing next to the vehicle. Dep. Sohal recognized this person and believed him to be Dos Palos Police Officer Johnny MATHIS. Dep. Sohal stated MR. MATHIS displayed symptoms intoxication that were immediately recognizable to him. While Dep. Sohal talked to MR. MATHIS, he noticed the driver's side, rear window of MR. MATHIS' vehicle was smashed out and asked MR. MATHIS about it. MR. MATHIS gave no response. Dep. Sohal asked MR. MATHIS if everything was all right. MR. MATHIS replied, "I'm ok," and then moved to enter his vehicle. Dep. Sohal instructed MR. MATHIS to remain where he was. MR. MATHIS gave little response and entered his vehicle. Dep. Sohal requested back up, radioing to dispatch, "Step it up." Dep. Sohal more than once ordered MR. MATHIS not to leave. Instead, MR. MATHIS drove away in an eastbound direction towards the city of Merced. Dep. Sohal followed, initiating a vehicle pursuit. He also reported the pursuit and a possible DUI to dispatch. Dep. Hawkins soon joined the pursuit as the secondary unit. Dep. Sohal indicated the speed of the pursuit was 30 miles per hour. While following MR. MATHIS, Dep. Sohal watched MR. MATHIS extend his left hand outside the driver's window while holding a firearm. He observed as MR. MATHIS fired the weapon into the air. Sergeant Framstad also joined the pursuit as it proceeded on Hwy. 140 eastbound headed toward the City of Merced.

As the pursuit entered the city limits of Merced, the incident was relayed to the Merced Police Department. On-duty Merced Police officers were immediately dispatched. The pursuit continued, turned south-west onto X Street, travelled southbound onto West Avenue, and finally turned west onto Lopes Avenue. While driving on Lopes at approximately fifteen miles per hour, MR. MATHIS again held a handgun outside of the driver's side window, this time firing multiple shots. MR. MATHIS continued westbound on Lopes Avenue and then drove his vehicle directly into the closed garage door of the residence at 1891 Lopes Ave. Sgt. Framstad and Deputies Hawkins and Sohal parked their clearly marked Sheriff's Office patrol units so that they surrounded MR. MATHIS and the home at 1891 Lopes Ave. Deputies gave several verbal commands to MR. MATHIS. MR. MATHIS was nonresponsive. Deputies reported MR. MATHIS accelerated his vehicle, spinning the tires. At the same time, he fired multiple shots within the vehicle. The tires quickly smoked and made it difficult for deputies to see into the vehicle. Deputy Hawkins stated he yelled to MR. MATHIS and identified himself. He thought contacting MR. MATHIS might help de-escalate the situation since he and MR. MATHIS had worked together previously.

While the above was taking place, Merced Police Officer Nate McKinnon responded from the central station at 611 W. 22<sup>nd</sup> St. Merced and was the first MPD officer on the scene. Ofc. McKinnon parked his marked police vehicle to the east of MR. MATHIS and the residence. The in-car camera from Ofc. McKinnon's vehicle reflects that he arrived at 19:59:14 hrs. Images from

the camera show smoke hanging in the air close to MR. MATHIS' vehicle. Ofc. McKinnon retrieved his patrol rifle and gear and took a position looking west towards MR. MATHIS. Ofc. V. Sapien, assigned to beat L11, also responded to the scene and was the second MPD officer to arrive. Ofc. Sapien arrived traveling south on Sidney Lane. Ofc. Sapien parked his marked police vehicle east of the residence, facing south.

The opened, front, passenger door of his patrol vehicle sheltered Ofc. McKinnon. While maintaining position, Ofc. McKinnon observed a muzzle flash that he recognized as a firearm being discharged. Ofc. McKinnon returned fire with one shot from his patrol rifle. The bullet struck MR. MATHIS in the head. MR. MATHIS slumped over in the vehicle. Officers and deputies reported they did not observe any further movement.

The following officers were dispatched and arrived after the shots were fired: Officer Nava, who was assigned to beat L30; Officer DeJong, who was assigned to beat A13; Officer E. Rodriguez, who was assigned to beat L22; and Sgt. Pintabona, who was assigned to beat M37. The Merced Police Dispatch log also indicates that Merced City Fire (E52) was dispatched at 20:00:09 hrs. The Merced Police Officers and Merced County Sheriff's deputies continued to attempt to make contact with MR. MATHIS.

MCSO dispatch alerted the Merced County Sheriff's Office SWAT team. Sgt. Goncalves and Deputies Lanford, and McKenzie arrived and assisted. SWAT deployed a robot to safely approach MR. MATHIS and his vehicle. Once determined MR. MATHIS was not responding, SWAT approached and found MR. MATHIS slumped over in the driver's seat of the vehicle, leaning over the center console. Sgt. Goncalves reported that MR. MATHIS' right arm was extended to the east, resting on the passenger seat. MR. MATHIS' right hand held a handgun, and his finger was still on the trigger. Sgt. Goncalves carefully removed the weapon from MR. MATHIS' hand and placed it on the passenger seat of the vehicle. Other SWAT team members removed MR. MATHIS from the vehicle. Dr. Tampkin, a MCSO Reserve Deputy Sheriff, examined MR. MATHIS and pronounced him dead at the scene.

Due to potential conflict issues, the Merced County District Attorney's Office, Bureau of Investigation took control of the investigation. Under supervision of the DA Bureau of Investigations, the Merced Police Department Crime Scene Response Team processed the scene. The MPD CSRT found and identified seven bullet strikes into the wall of the residence above and near the garage door. Later, the DA Bureau of Investigation received a report that MR. MATHIS had driven his vehicle into the closed yard gates belonging to Malibu Boats, located at 1 Malibu Ct. Merced, CA. Surveillance video at the scene confirmed on the night of the shooting MR. MATHIS drove his vehicle to the Malibu Boats location prior to the civilian call for assistance on State Highway 140.

## **II. DISPATCH LOGS AND RECORDINGS**

At 7:46:48 p.m., the Merced County Sheriff's Office received a 911 call from a citizen that there was a suspicious vehicle parked between her residence and her neighbors. She indicated she could hear yelling and the vehicle was running.

**a. Summary of the Merced County Sheriff's Office Dispatch Log:**

Undocumented – Dep. Sohal's first contact with MR. MATHIS

At 7:54:51 p.m. – Dep. Sohal requests back-up by indicating, "Step it up."

At 7:55:04 p.m. – Dep. Sohal indicates pursuit possible DUI.

At 7:55:44 p.m. – Dep. Sohal indicates one shot fired into the air.

At 7:55:59 p.m. – Dep. Sohal indicates another shot fired into the air.

At 7:57:17 p.m. – Dispatch relays the pursuit to Merced Police Department.

At 7:58:30 p.m. – Dep. Sohal indicates more shots fired.

At 7:59:49 p.m. – MR. MATHIS drives his vehicle into 1891 Lopes Ave. property.

At 7:59:57 p.m. – Dep. Sohal indicates more shots fired.

At 8:00:13 p.m. – Dep. Sohal indicates shots fired and smoke due to the tires spinning. He reports he cannot see into the vehicle.

At 8:00:49 p.m. – Dep. Sohal indicates more shots fired.

At 8:01:01 p.m. – Dep. Sohal indicates MR. MATHIS reloading or grabbing another weapon.

At 8:01:21 p.m. – Dep. Sohal indicates two more shots fired.

At 8:01:45 p.m. – Dep. Sohal indicates MR. MATHIS possibly slumped over the wheel.

**b. Summary of the Merced Police Department Dispatch Log:**

This log is created using a 24 hour clock.

At 19:55:13 hrs. – MPD call created

At 19:56:04 hrs. – MPD dispatch indicates MCSO in a low speed pursuit and one shot fired into the air.

At 19:56:52 hrs. – MPD dispatch advised per MCSO that vehicle is a white KIA Soul and Johnny MATHIS is possibly driving.

At 19:57:04 hrs. – L30 (Officer Nava) dispatched.

At 19:57:18 hrs. – A1 (Officer McKinnon) dispatched.

At 19:57:19 hrs. – A13 (Officer DeJong) dispatched.

At 19:57:25 hrs. – L22 (Officer E. Rodriguez) dispatched.

At 19:57:32 hrs. – L22 (Officer E. Rodriguez) reports he is en route.

At 19:57:33 hrs. – Dispatch relays suspect with a handgun and fired one shot into the air.

At 19:57:51 hrs. – L11 (Officer Sapien) dispatched.

At 19:58:18 hrs. – MCSO relays shot fired again.

At 19:59:30 hrs. – MCSO relays pursuit stopped at 1891 Lopes Ave.

At 19:59:44 hrs. – Dispatch indicates shots fired.

At 19:59:54 hrs. – Dispatch indicates multiple shots fired.

At 20:00:31 hrs. – M37 (Sgt Pintabona) asks for Riggs and Fire to stage nearby.

At 20:00:35 hrs. – Dispatch indicates shots fired again.

At 20:00:51 hrs. – E52 (Merced City Fire Engine 52) dispatched.

At 20:01:09 hrs. – A1 (Officer McKinnon) indicates suspect is firing at officers.

At 20:01:36 hrs. – MCSO advises MPD that officer stated suspect is possibly slumped over.

At 20:01:50 hrs. – A1 (Officer McKinnon) states, “We have shots fired at the responsible.”

At 20:02:06 hrs. – MCSO advises there is no more movement.

c. **Summary of the Merced County Sheriff’s Office Dispatch Recording of Kathy Mathis**

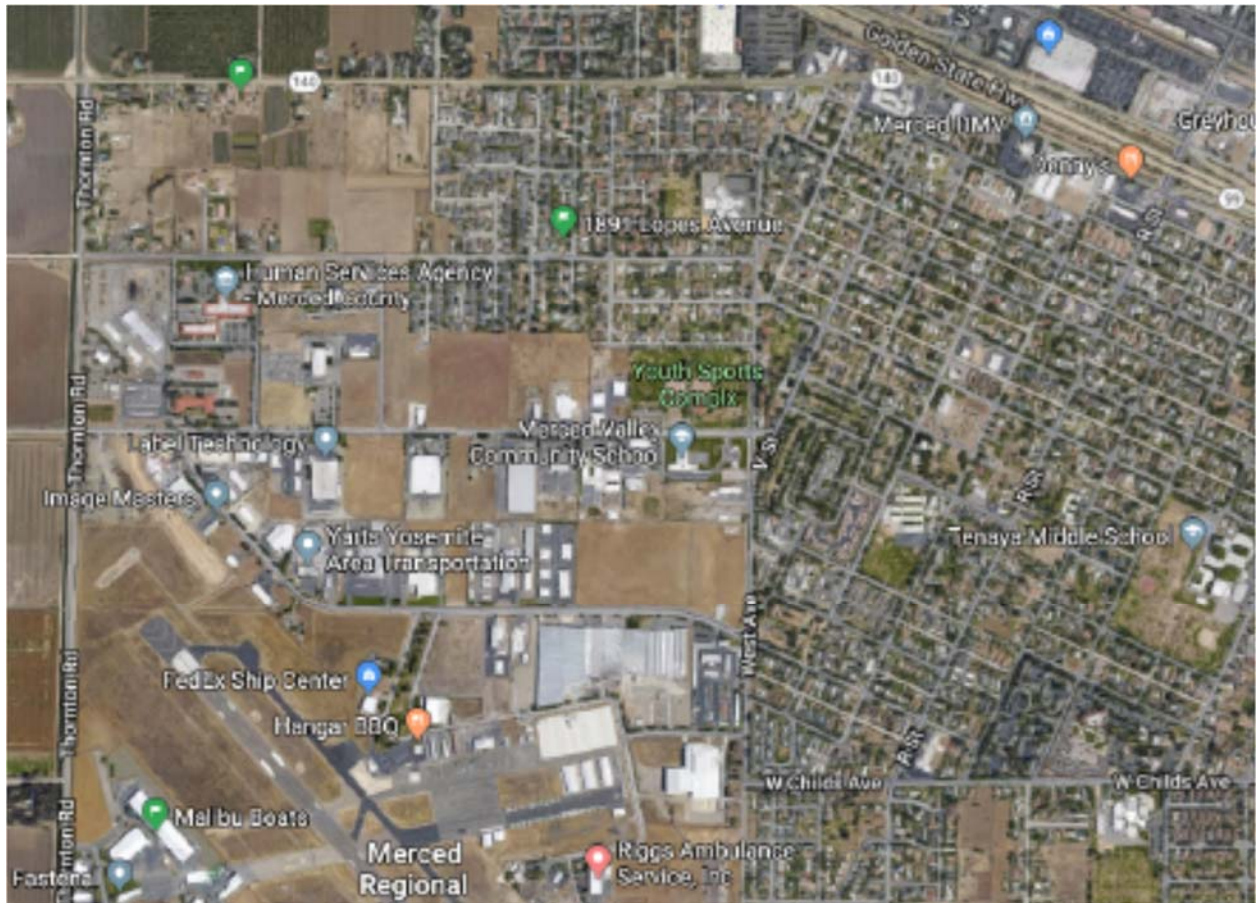
At 8:02:01 p.m., MCSO dispatch indicates that Mrs. Kathy Mathis is on the phone. During this recorded phone call, Mrs. Mathis indicates MR. MATHIS is trying to come through the garage. Mrs. Mathis states she can hear the gunshots. The audio recording captures her crying while she tries to assist her father from the front room. The tone of Mrs. Mathis’ voice indicates she is very frightened. Mrs. Mathis reports MR. MATHIS is armed with a .45 handgun. She states earlier the same day, MR. MATHIS told her older daughter he had about 10 rounds left. The call to dispatch does not reveal when Mrs. Mathis learned this. Mrs. Mathis relays that her dad, mom, and 13-year-old daughter are all in the house. Mrs. Mathis tells the dispatcher that she is going to retrieve her own gun because she does not want to take any chances while her daughter is in the house. Mrs. Mathis states there are some individuals who she thinks MR. MATHIS would be willing to

talk with. She also says MR. MATHIS may have been drinking, [REDACTED]. The dispatcher stays on the phone with Mrs. Mathis until she leaves the residence with officers and deputies.

### III. CRIME SCENE

MR. MATHIS' activities on February 12, 2019 took place at three separate locations. In chronological order, they were: 1) at 7:31:34 p.m. – the entry gate to Malibu Boats, 1 Malibu Court Merced, California; 2) at 7:46:48 p.m. – the 2100 block of West California State Highway 140, Merced, California; and 3) at 7:59:03 p.m. – 1891 Lopes Avenue, Merced, California. Following below are a street map and a satellite map of all three scenes. Green drop pins mark the locations.





**a. Malibu Boats, 1 Malibu Court, Merced, California**

Prior to contact with Dep. Sohal, MR. MATHIS drove onto the property of Malibu Boats located at 1 Malibu Court, Merced, California. The company manufactures boats at this warehouse location. Security cameras captured MR. MATHIS' vehicle driving onto the property. At time stamp 19:31:35 hrs., MR. MATHIS' vehicle drives through the locked cyclone gate, and at 19:32:26 hrs., the vehicle exits the property. Stills from the security footage are below. MPD received an alarm call from Malibu Boats at 19:34:16 hours, indicating an active alarm at the main gate.





**b. 2100 Block of West California State Highway 140, Merced, California**

Dep. Sohal responded to the 2100 Block of West California State Highway 140 in Merced and contacted MR. MATHIS. The roadway is a rural highway in Merced County with little or no lighting. On February 12, 2019 at 7:46:48 p.m., darkness had fallen as shown by the stills taken from Dep. Sohal's BWC at the time of his initial contact with MR. MATHIS.



During daylight hours, the area on West California State Highway 140 looks like this photo:



**c. 1891 Lopes Avenue, Merced, California**

1891 Lopes Avenue, Merced, California is a residential lot, located in a populated neighborhood. The residence sits on the northwest corner of the intersection of Lopes Ave. and Sidney Lane. As mentioned above, the incident occurred during nighttime hours, but at this location, streetlights provided illumination. The weather at the time of the incident was slightly rainy and breezy. However, the weather worsened as investigators processed the crime scene, transitioning to high winds and rain. The photo below was taken in the early morning hours on February 13, 2019, before the scene was processed for evidence.

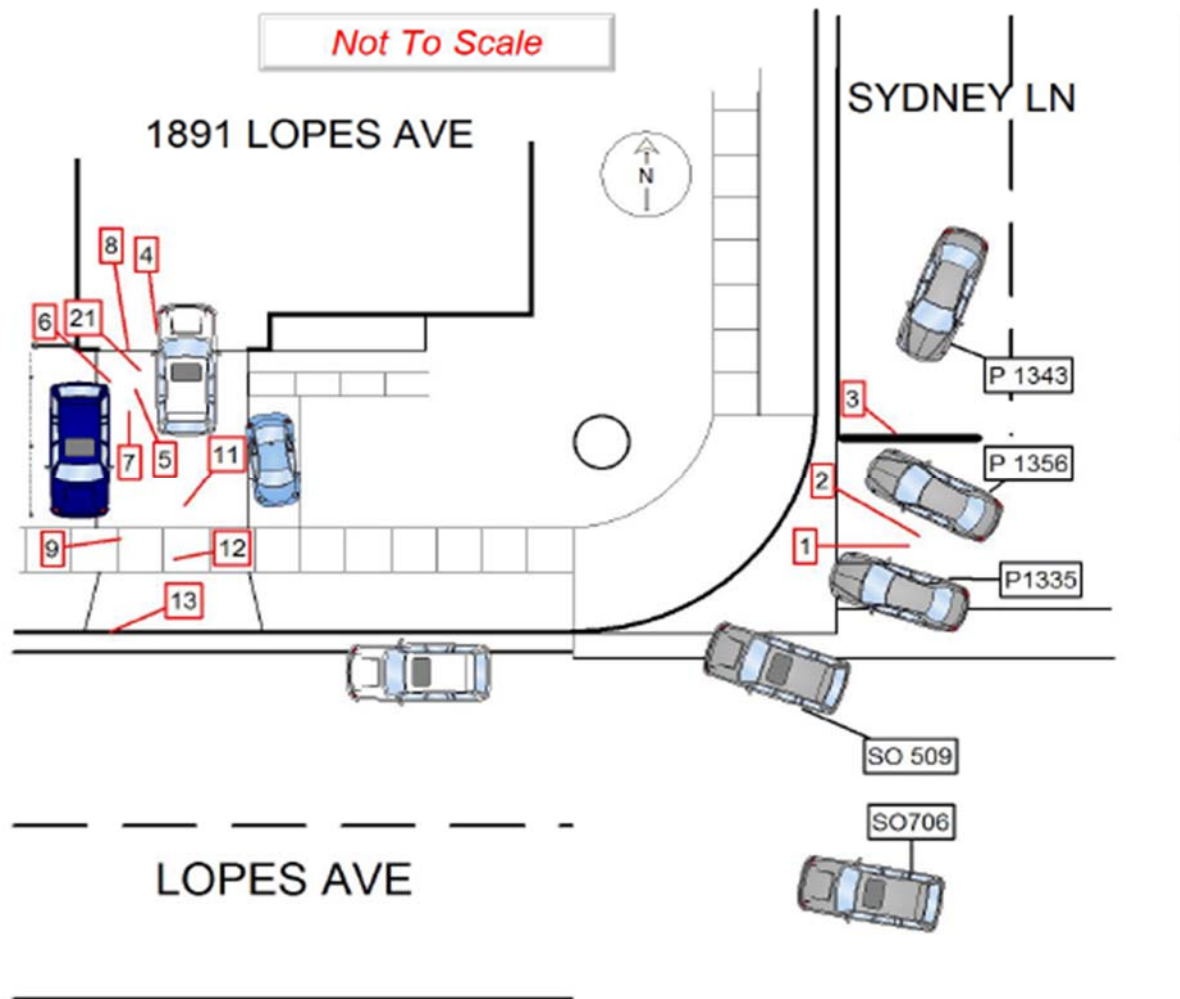


Shown below, Google Maps provided a daylight view of the scene, taken at some moment prior to the incident. Google happened to capture MR. MATHIS' Kia Soul parked at the house as well as a Dos Palos Police Vehicle in the driveway.



#### d. Crime Scene Diagram

The Merced Police Department Crime Scene Response Team created the crime scene diagrams below. The diagrams are not to scale.

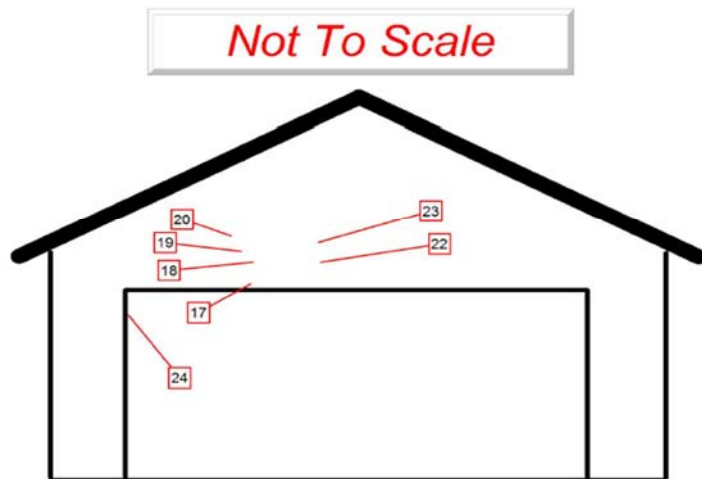


#### Vehicles:

- 4** Johnny MATHIS' Kia Soul
- SO 706** Deputy Sohal, shown as re-positioned after the shooting
- SO 509** Deputy Hawkins
- P1335** Officer McKinnon
- P1356** Officer Marinez, arrived after the shooting had taken place
- P1343** Officer Sapien

**Items of Evidence:**

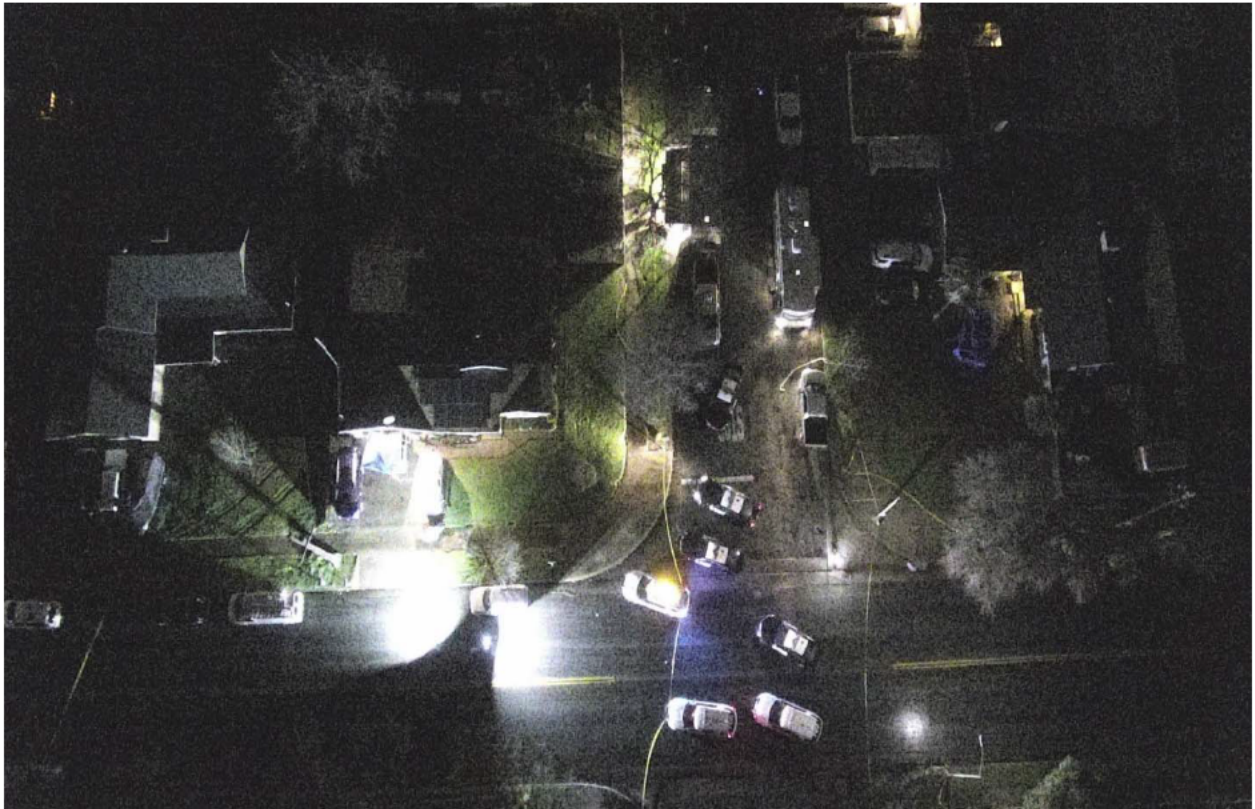
- 1) Backpack 10' 2" Right (E) 7' 9"
- 2) Cartridge 11' 4" Right (E) 8' 11"
- 3) Casing 23' 4" Right (E) 6' 2"
- 4) Vehicle 6SGE686 LF Tire 2' Right (E) 9'
- 4) Vehicle 6SGE686 LR Tire -6' 4" Right (E) 9'
- 5) Body / Belt Buckle -4' 5" Right (E) 6' 8"
- 6) Knife -3' 6" Right (E) 3' 10"
- 7) Casing -6' 11" Right (E) 6'
- 8) Glass 0' Right (E) 5' 10"
- 9) Casing -21' 9" Right (E) 5'
- 11) Piece of Plastic -17' 11" Right (E) 12'
- 12) Piece of Plastic -24' Right (E) 10' 11"
- 13) Piece of Plastic -32' 4" Right (E) 3' 10"
- 21) Piece of Plastic -2' 1" Right (E) 7' 2"

**Bullet strikes on house:**

- 17) 7' 4" Right (E) 7'
- 18) 8' 2" Right (E) 7' 1"
- 19) 8' 7" Right (E) 6' 8"
- 20) 9' 2" Right (E) 6' 4"
- 21) 8' 2" Right (E) 9' 5"
- 23) 8' 11" Right (E) 9' 4"
- 24) 6' 2" Right (E) 2' 9"

**e. Additional Crime Scene Photos**

Drone photo of the crime scene:



**P1335 Ofc. McKinnon**

**P1356 Ofc. Marinez,**  
arrived after the shooting

Ofc. McKinnon's gear bag is on the ground near the passenger side of his patrol vehicle.

#### **IV. EVIDENCE**

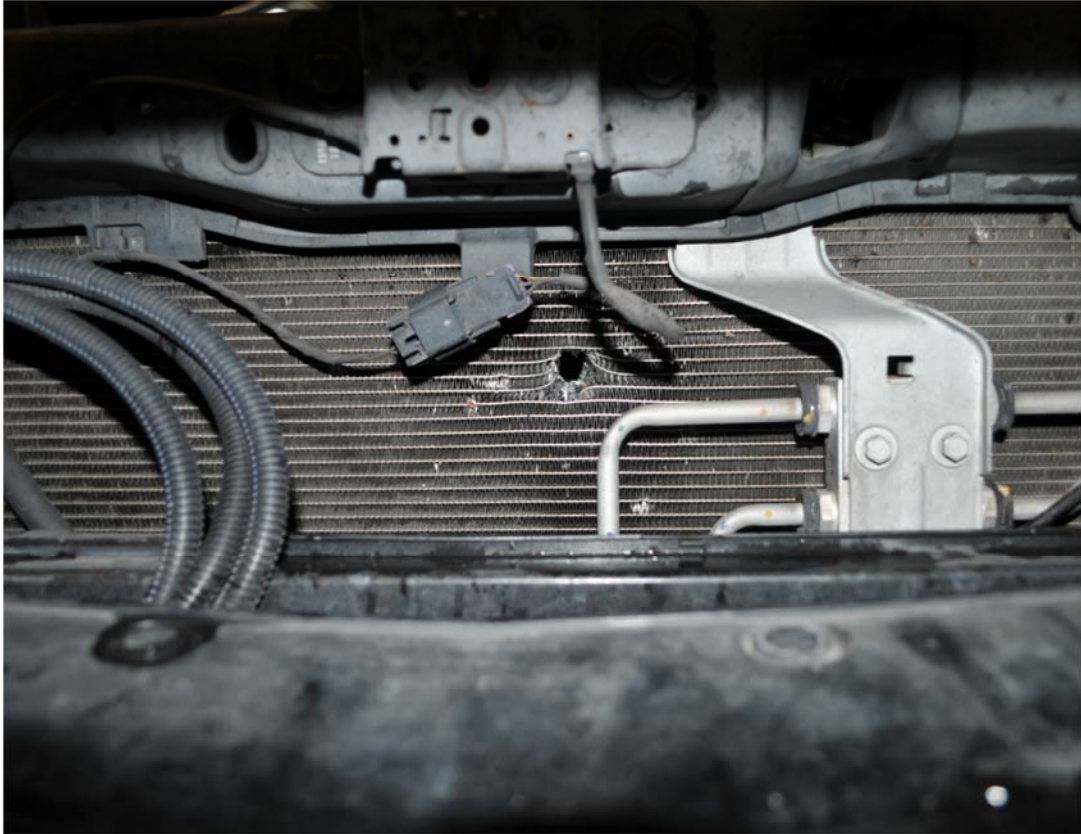
The Merced Police Department Crime Scene Response Team processed the crime scene for evidence under the supervision of the DA Bureau of Investigations. MPD Sgt. Emily Foster authored all of the MPD CSRT reports. All evidence was collected and is still maintained by the Merced Police Department.

Ofc. McKinnon's patrol vehicle was examined and found to have been struck by a single bullet. The bullet struck the front of the vehicle, near midline, at the bottom of the grill.





Search discovered that the bullet travelled further into the vehicle and was still located within the engine compartment. MPD CSRT recovered the bullet and placed it into evidence.









MPD CSRT also processed the vehicle MR. MATHIS was driving for evidence. Many bullet strikes were located on the Kia Soul MR. MATHIS was driving, but only three areas were identified where bullets entered the vehicle: the driver's-side, rear, passenger window; the rear, cargo-hatch door/window; and the passenger-side, front window. The bullet that passed through the driver's-side, rear, passenger window shattered the window, but much of the window was left intact due to window tinting. The shatter pattern indicated a bullet passed through it from the outside as shown in the photos below:









The directional indications from the window shatter and the glass found throughout the interior of the vehicle indicated the bullet entered the vehicle. Upon examination, a bullet hole was located in the rear of the front passenger seat. A bullet hole was also located in the panel of the passenger-side, rear door.



The trajectory shown by passing a rod through the path of the bullet corresponded to the shot fired through the driver's side, rear, passenger door.



A bullet fragment was collected from the passenger-side, rear door and logged as item 51C, recovered from Scene 2.







The second entry point was located at the rear of the vehicle on the rear cargo-hatch.





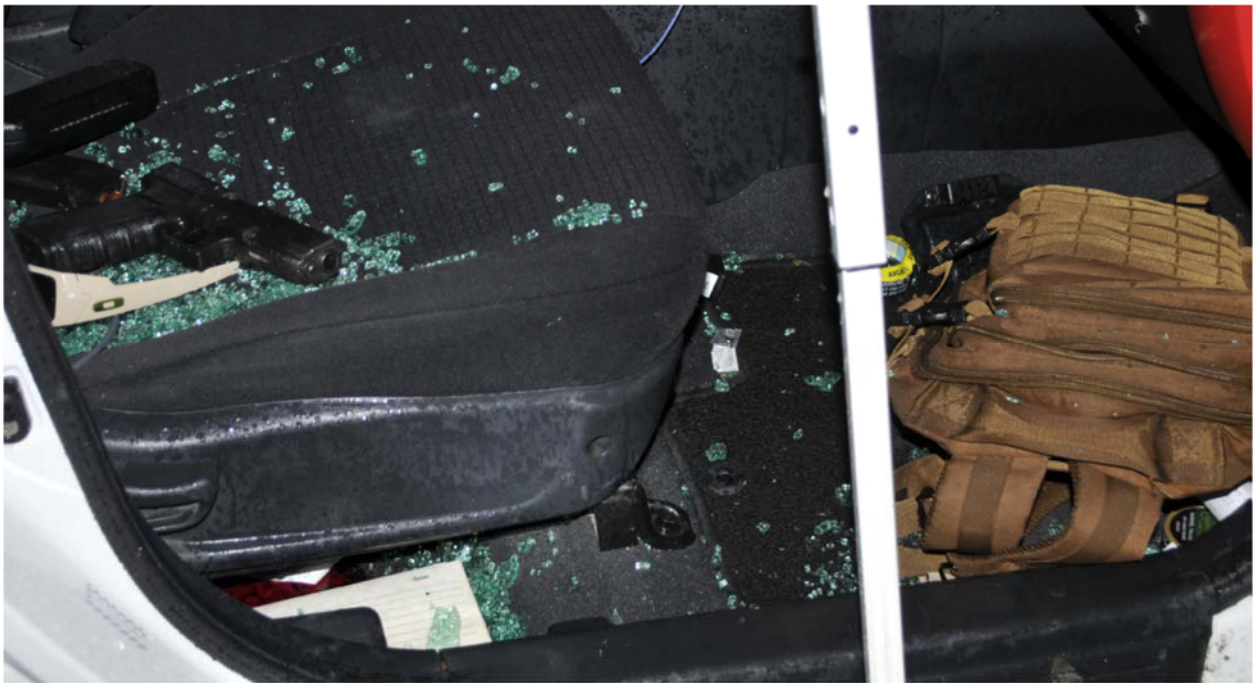
A bullet fragment was recovered from the back of the right rear passenger seat. It was embedded in the foam in the back of the seat. MPD CSRT logged the bullet fragment as evidence item 44 from scene 2, and the bullet strike hole in the cushion was identified in the log and in photos as item 48B.







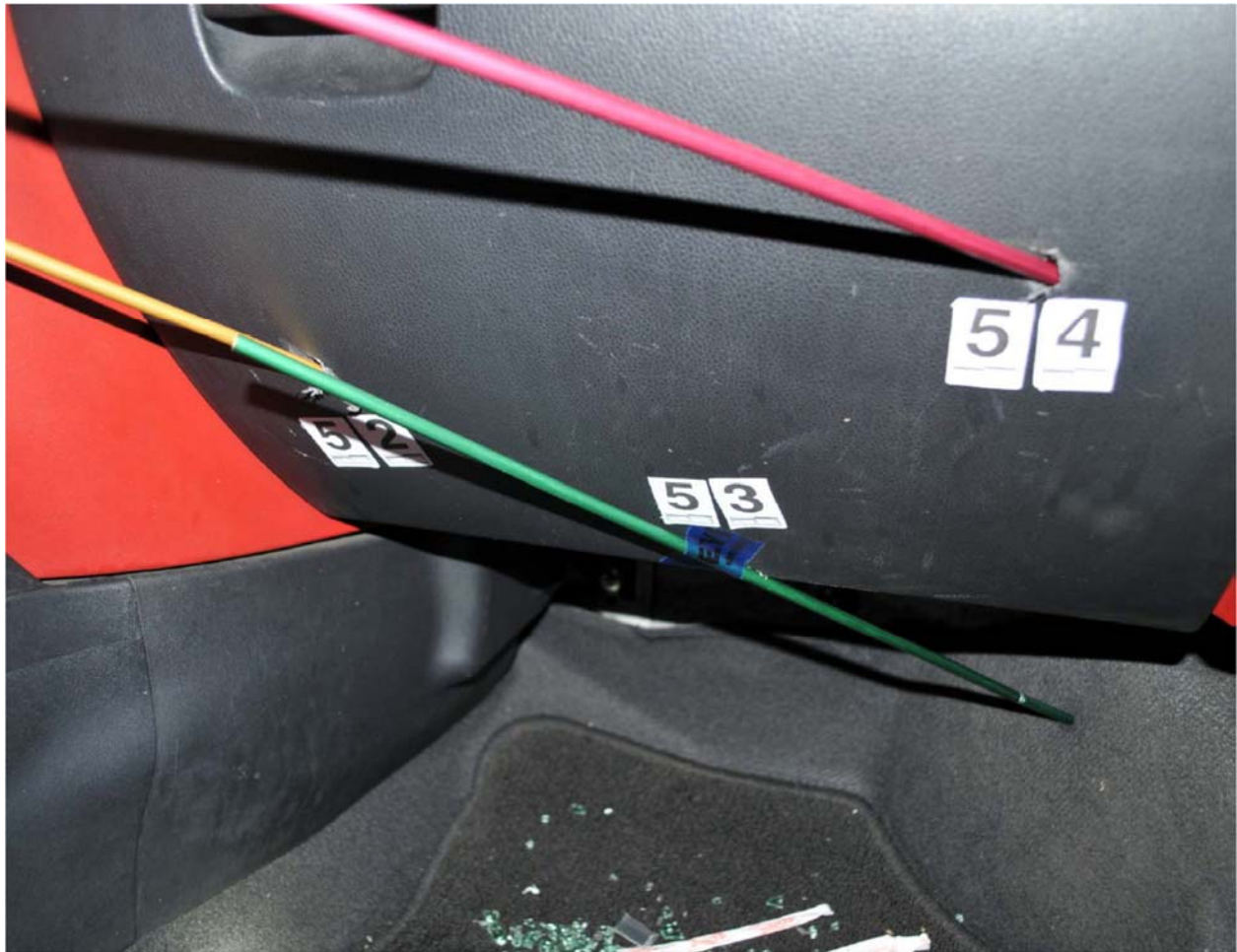
Evidence related to the final entry point was limited. The front passenger window was shattered, and it was impossible to determine if it was shattered inward or outward. However, photos taken of the scene during the early morning hours of February 13, 2019 show glass from the window collected on the front passenger seat of the Kia Soul and on the passenger floorboard area.



While a photo of the exterior of the car taken at the same time, shows the ground below the passenger window was generally free from debris or glass.



There were bullet strikes in the front interior of the passenger compartment. All indicated an outward trajectory, and the recovered bullet fragments confirmed this.



In addition, all of the recovered bullet fragments from the vehicle were consistent with the ammunition used by MR. MATHIS in his handgun. Evidence at the scene and in the vehicle indicates that there was only one round fired by law enforcement at the scene, and it was the bullet that struck MR. MATHIS. Forensic analysis from the California Department of Justice, Bureau of Forensic Services confirmed this.

The DA Bureau of Investigations submitted all bullets and fragments taken in to evidence from the vehicle and the autopsy to the DOJ/BFS Laboratory for analysis. Supervising Investigator Gorman transported the following evidence items to the BFS lab in Ripon, California:

DOJ #	MPD CSRT #	Item Description	Location Recovered
553872	Item # 2, Scene 1	A 223 Remington cartridge	1891 Lopes Avenue
553873	Item # 3, Scene 1	A 223 Remington cartridge case	1891 Lopes Avenue
553880		A Rock River Arms rifle (serial number CM112589) and magazine	Officer McKinnon at the Merced Police Department
553886	Item # 25, Scene 1	A copper jacketed bullet	Patrol Vehicle 1335 at the City Maintenance Yard
553921	Item # 3, Scene 2	A Glock pistol (serial number TCN593)	Kia Soul at the MPD Evidence Facility
553927	Item # 21, Scene 2	A copper jacketed bullet	Kia Soul at the MPD Evidence Facility
553944	Item # 31, Scene 2	A Winchester .45 Auto cartridge case	Kia Soul at the MPD Evidence Facility
553959	Item #44, Scene 2	A copper-jacketed bullet	Kia Soul at the MPD Evidence Facility
553968	Item # 51 C, Scene 2	A copper-jacketed bullet	Kia Soul at the MPD Evidence Facility
553969	Item # 54 D, Scene 2	A copper-jacketed bullet	Kia Soul at the MPD Evidence Facility
553971	Item # 55, Scene 2	A copper bullet jacket fragment	Kia Soul at the MPD Evidence Facility
554068		A copper bullet jacket fragment	The Coroner's Office

BFS assigned their own item numbers as they examined each item. Item 554068 was the bullet fragment recovered in the autopsy of MR. MATHIS. The bullet fragment was compared by BFS to test bullets fired from Ofc. McKinnon's Rock River Arms Rifle, item 553880. The rifle has six lands and grooves with a right hand twist. The rifling pattern on the bullet fragment, item 554068, was consistent with the rifling pattern created on the test bullets fired from Ofc. McKinnon's rifle, item 553880. However, when subjected to microscopic comparison, a conclusive match could not be made. Therefore, BFS found the bullet fragment, item 554068, could not be eliminated nor could it be identified as being fired from Ofc. McKinnon's rifle, item 553880.

Bullet item 553886 was recovered from MPD patrol vehicle P1335, driven by Ofc. McKinnon. BFS compared it to bullets test fired from item 553921, the Glock pistol used by MR. MATHIS. The barrel of the Glock pistol had 8R polygonal rifling. The rifling pattern and microscopic identifiers conclusively identified item 553886, the copper jacketed bullet recovered from Ofc. McKinnon's patrol vehicle, as fired from MR. MATHIS Glock pistol, item 553921. BFS also concluded item 553944, the Winchester .45 Auto cartridge case, was fired by item 553921, the Glock pistol. Items 553927, 553959, and 553968, three copper-jacketed bullets collected from

MR. MATHIS' vehicle by MPD CSRT, possessed traits that were characteristic of being fired from item 553921, the Glock pistol; however, they lacked specific identifiers available under microscopic scrutiny. Therefore, copper-jacketed bullets, items 553927, 553959, and 553968, could not be confirmed or eliminated as being fired from item 553921, the Glock pistol.

Item 553969, a copper-jacketed bullet, was collected as item #44 by MPD CSRT. The bullet was found lodged in the back of the rear passenger seat of the Kia Soul. MPD CSRT concluded, based on trajectory and the damage to the vehicle, the bullet was fired into the vehicle, entering from the rear of the vehicle. BFS found rifling on item 553969 consistent with bullets fired from item 553921, the Glock pistol. However, when subject to microscopic examination, significant corresponding microscopic identifiers were not observed. The bullet identified as item 553969 could not be excluded or confirmed as being discharged from item 553921, the Glock pistol.

Item 553873, the 223 Remington cartridge case located at 1891 Lopes Avenue and identified by MPD CSRT as item number 3, was fired by the Rock River Arms rifle (Item 553880). Item 553872, the unfired 223 Remington cartridge also located at 1891 Lopes Avenue and identified by MPD CSRT as item number 2, could not be identified or eliminated as being cycled in the Rock River rifle.

It is important to note that because the Rock River Arms rifle and the Glock pistol possessed different and distinct rifling patterns, there was no possibility that bullets fired from one weapon could be confused with bullets fired from the other. In other words, the fact that a bullet was not excluded as being fired by the Rock River Arms rifle means that its rifling pattern was consistent with six lands and grooves with a right hand twist. A bullet showing that pattern could not have been fired from the Glock pistol because the Glock's rifling pattern showed 8R polygonal rifling. This means that even though the bullet recovered at the autopsy, item 554068, was not conclusively identified as being fired from the Rock River Rifle, item 553880, it is impossible for that bullet to have been fired by the Glock pistol held by MR. MATHIS.

## **V. WITNESS STATEMENTS**

### **a. Summary of Interview with MCSO Deputy Satver Sohal**

On February 15, 2019, at approximately 9:15 a.m., Supervising Investigator Curt Gorman interviewed MCSO Dep. Satver Sohal about the pursuit and shooting that took place on February 12, 2019. Dep. Sohal said that he was on duty February 12, 2019 and started his shift at 7:00 p.m. He was wearing an approved sheriff's department uniform with patches and a badge and driving a marked patrol unit. On the first call he received, Dep. Sohal responded to a welfare check of a suspicious vehicle parked on California State Highway 140, near Thornton Rd. The caller stated there was a scream heard coming from the vehicle. Dep. Sohal said as he arrived, he pulled up behind the vehicle and did not immediately see anyone in the vehicle. He got out on foot to approach the white Kia Soul.

Dep. Sohal said as he approached the car he saw the driver and recognized him as Johnny MATHIS. He tried talking to MR. MATHIS, but MR. MATHIS did not respond. Dep. Sohal activated his body camera at that point and asked MR. MATHIS if he was ok. MR. MATHIS said,

"I'm ok." MR. MATHIS was driving a Kia Soul, and Dep. Sohal saw that the rear window on the driver's side of the car was shattered. When he asked MR. MATHIS about the window, he got no response. MR. MATHIS then got back into his car. Dep. Sohal stated he thought MR. MATHIS might just be sitting down because he appeared as though he was under the influence of alcohol. Dep. Sohal observed MR. MATHIS had slurred speech and was unsteady on his feet.

Dep. Sohal stated he gave MR. MATHIS orders to stay at the scene on Hwy. 140, but MR. MATHIS drove away in the vehicle regardless of the instructions. Dep. Sohal had already asked for a backup, and Deputy Hawkins was approaching. Dep. Sohal stated he did not see a firearm during the initial stop and he did not smell alcohol. Dep. Sohal said he based MR. MATHIS' intoxication on objective signs and symptoms he had seen.

Dep. Sohal stated a pursuit started eastbound on Hwy. 140 and Deputy Hawkins joined as the secondary unit. Soon after the pursuit started, Dep. Sohal stated MR. MATHIS stuck his left hand out of the driver's side window. MR. MATHIS was holding a gun and fired off a single round into the air. Dep. Sohal stated this occurred near the Massaso Street sign on Hwy. 140. Dep. Sohal said they travelled at speeds estimated between 20-40 MPH throughout the pursuit and that he was "zig-zagging" so not to give MR. MATHIS an easy target if he fired more shots. Dep. Sohal said that Sgt. Framstad joined the pursuit as it entered the city streets. Dep. Sohal reported, as the pursuit turned onto Lopes Ave, MR. MATHIS again stuck his left hand out of the car, still holding a firearm. Dep. Sohal recounted that MR. MATHIS fired off a few more shots, but he was not sure of the exact amount or direction.

Dep. Sohal said that MR. MATHIS pulled into the driveway of 1981 Lopes Avenue and crashed into the garage door without ever stopping. Dep. Sohal said he jumped out of his patrol unit and took up a position of concealment behind a parked vehicle in front of the residence. He said the Kia's tires were spinning and created smoke. Dep. Sohal reported MR. MATHIS fired off more shots from inside the vehicle and then, just moments later, Dep. Sohal heard one more shot. He then said that Dep. Hawkins tried to talk to MR. MATHIS to de-escalate the situation, but MR. MATHIS did not respond. Dep. Sohal said, at that time, a MPD unit pulled up at the scene.

Dep. Sohal described hearing MR. MATHIS "messaging with the gun," saying he thought MR. MATHIS was racking the slide of the firearm. Dep. Sohal said, while MR. MATHIS was "messaging with his firearm," the Kia's wheels stopped spinning. He reported he then heard two more shots and afterward heard the MPD officer say MR. MATHIS was slumped over the steering wheel of the car. Dep. Sohal stated all the officers on scene stayed in place, keeping containment, while waiting for SWAT to respond. Dep. Sohal said he never fired a shot because, in his position, he was not able to see MR. MATHIS through the smoke and the Kia's tinted windows.

Dep. Sohal carried serious safety concerns for everyone present because of MR. MATHIS' law enforcement background. Dep. Sohal also said after he heard the last two shots, he noticed the engine compartment of Officer McKinnon's car started smoking. He did not know what happened to the car, but he thought it might have been shot. Dep. Sohal said he did not know a MPD officer fired one of the last two shots at the time they were fired. He later learned one of the shots came from a MPD officer.

## **b. Summary of Interview with Witness [REDACTED]**

On February 19, 2019, Supervising Investigator Curt Gorman interviewed [REDACTED] via telephone. [REDACTED] happened to be on a citizen ride-a-long with Dep. Sohal on February 12, 2019 and witnessed the incident. [REDACTED] said the first call of the night was for a suspicious car on the shoulder of the road. [REDACTED] said, as Dep. Sohal pulled up to the car, he saw MR. MATHIS get out of the car. [REDACTED] could not hear the dialog between Dep. Sohal and MR. MATHIS, but MR. MATHIS did not appear to [REDACTED] to be listening to Dep. Sohal. [REDACTED] said MR. MATHIS “jumped into his car” and took off and then Dep. Sohal chased after him.

[REDACTED] said, when they started to follow MR. MATHIS, another deputy was already approaching and joined the pursuit. [REDACTED] saw the suspect car drive mostly toward the middle of the road as they traveled eastbound. [REDACTED] reported MR. MATHIS suddenly put his hand out the window of the vehicle, and [REDACTED] saw MATIS had a gun in his hand. [REDACTED] said MR. MATHIS fired off one round while he was still on Hwy. 140. According to [REDACTED], they traveled at slow speeds throughout the pursuit. He said, as they turned onto a residential street, MR. MATHIS fired off several more rounds while he continued driving. [REDACTED] said MR. MATHIS reached a house, pulled into the driveway, and crashed into the garage door. He then saw MR. MATHIS reach out of the window while holding a black handgun and start shooting.

[REDACTED] described most of the shots as “random”, but he still felt as though MR. MATHIS was “trying to shoot the deputies”. [REDACTED] said, when the pursuit stopped, he got out of the patrol car and ran away to a distance where he thought he was safe. He said he heard more shots fired and thought “the deputies used great restraint in not shooting back at the time” because he believed “everyone was in great danger because of the actions of MR. MATHIS”. [REDACTED] concluded MR. MATHIS was drunk and possibly high on drugs because of his actions and demeanor at the beginning of the contact with Dep. Sohal. [REDACTED] described MR. MATHIS as confused and unsteady on his feet. [REDACTED] reported, after he heard the final two shots, more officers arrived and they directed him away from the scene. [REDACTED] used his cell phone to record a portion of the event, and he sent the video to Supervising Investigator Gorman.

## **c. Summary of Interview with MCSO Deputy Robert Hawkins**

On February 15, 2019, Supervising Investigator Curt Gorman interviewed MCSO Dep. Robert Hawkins about the pursuit and shooting that took place on February 12, 2019. Dep. Hawkins said that he was on duty that day and started his shift at 7:00 p.m. He was wearing a MCSO approved uniform with patches and a badge, and he was driving a marked patrol unit. He reported he heard a call for service go out to Dep. Sohal so he started in that direction. Dep. Hawkins described his behavior as a matter of practice to provide safety during calls to service. He said while headed in the direction of the call, he heard Dep. Sohal ask for assistance and to “step it up” so he knew the deputy was in need of help.

At this point, Dep. Hawkins learned Dep. Sohal had contacted Johnny MATHIS. Dep. Hawkins was familiar with MR. MATHIS and his qualifications and training and this made him worried. As Dep. Hawkins approached from the east, traveling westbound on Hwy. 140, MR. MATHIS

started driving and Dep. Sohal began following him. Dep. Hawkins passed the pursuit and said, as he passed, he made eye contact with MR. MATHIS. Dep. Hawkins made an immediate U-turn and took up second position in the pursuit with his lights and siren activated. He called out speed and location during the pursuit and heard Dep. Sohal call out that MR. MATHIS fired shots.

Dep. Hawkins said when MR. MATHIS turned on Lopes Avenue, he drove into a driveway that turned out to be 1891 Lopes Ave. Dep. Hawkins said the car MR. MATHIS was driving stopped moving forward in the driveway, but the tires were spinning causing smoke. Dep. Hawkins said he parked his patrol unit and got out, taking a position behind a parked vehicle near MR. MATHIS. He reported he had his patrol rifle with him. He described MR. MATHIS firing off rounds “two and three at a time”. Dep. Hawkins moved to a position just east of MR. MATHIS and could see the driver’s side of the car. During this time, he talked to MR. MATHIS, telling him to show his hands. Dep. Hawkins identified himself to MR. MATHIS because they worked together in the past. Dep. Hawkins thought that connection might help him to calm the situation. Dep. Hawkins reported he did not fire any rounds at MR. MATHIS. After the last shots, SWAT arrived and eventually pulled MR. MATHIS from the car and onto the ground. Dep. Hawkins later approached along with Dr. Tampkin who pronounced MR. MATHIS deceased at 2157 hours.

Dep. Hawkins said during the pursuit he heard “one shot fired” on Hwy. 140 and a “few shots” on Lopes Avenue. He did not see a gun during the pursuit. Dep. Hawkins watched MR. MATHIS hit the garage at speed, without coming to a stop, and said it looked like something inside the garage stopped MR. MATHIS. He said MR. MATHIS’ tires continued to spin as he was up against the garage door. Dep. Hawkins said, the entire time he was talking to MR. MATHIS, MR. MATHIS never made a verbal response. Dep. Hawkins also said there was no doubt that it was gun shots coming from MR. MATHIS’ car.

#### **d. Summary of Interview with MCSO Sergeant Ray Framstad**

On February 15, 2019, Supervising Investigator Curt Gorman interviewed MCSO Sgt. Ray Framstad about the pursuit and shooting that took place on February 12, 2019. Sgt. Framstad said that he was on duty and started his shift at 7:00 p.m. He was wearing a MCSO approved uniform with patches and a badge, and he was driving a marked patrol unit. He said he heard the radio call for service due to a suspicious vehicle and responded to the area when he heard Dep. Sohal call out he was in a pursuit and shots were fired.

Sgt. Framstad said he caught up to the pursuit on Lopes Avenue. Shortly after, it stopped at 1891 Lopes Avenue. Sgt. Framstad saw the smaller white SUV driven by MR. MATHIS accelerate into the garage door and then heard multiple shots fired. He said it was hard to see the car due to all the smoke coming from the tires. Sgt. Framstad said MR. MATHIS smoked the tires a couple different times in between firing shots. He reported, after Merced Police Officers arrived, there were additional shots fired and then things just stopped. There was no more activity in the vehicle. He said he heard when Dep. Sohal radioed, saying that MR. MATHIS was “reloading” or “messing with” his firearm and then he heard just two more shots. Sgt. Framstad said after that he assisted in securing the scene until officers could approach the vehicle safely. He then discovered one MPD officer fired a shot. Officer McKinnon announced he fired the last shot. Shortly after, they

were able to get the occupants of the house out safely and out of the area. MCSO SWAT took over and removed MR. MATHIS from the vehicle.

**e. Summary of Interview with MPD Officer Nate McKinnon**

On February 14, 2019, at approximately 10:42 a.m., Supervising Investigator Curt Gorman interviewed MPD Ofc. Nate McKinnon at the Merced Police Department in the presence of his attorney. MPD Detective Moses Nelson was also present during the interview. Ofc. McKinnon stated that on the advice of his attorney he would give a voluntary statement.

Officer McKinnon said that he was on duty as a patrol officer on February 12, 2019, wearing a department approved police uniform that made him clearly identifiable as a police officer. He was driving a fully marked police vehicle with lights and siren. He said the Merced County Sheriff's Office advised that they needed help with a vehicle pursuit and the suspect driver had fired a shot from the vehicle. Ofc. McKinnon drove to the area of the pursuit and arrived just as the suspect vehicle came to rest after striking the garage door of the residence at 1891 Lopes Avenue. While he parked, Ofc. McKinnon saw smoke coming from the wheels of the suspect car, which he described as a white SUV. As he exited his patrol vehicle, he heard several gunshots coming from the suspect vehicle. Ofc. McKinnon grabbed his patrol rifle, and, as he was doing this, he heard four shots coming from the suspect car. He then moved to the passenger side of his patrol car and took up position at the door. He was able to see a solo occupant in the suspect car. Ofc. McKinnon then used magnified optics on his rifle to sight in on the suspect who he identified as Johnny MATHIS. He knew MR. MATHIS as a law enforcement officer from prior contacts throughout his career. While Ofc. McKinnon watched MR. MATHIS through his optics, MR. MATHIS fired another shot. Ofc. McKinnon saw the muzzle flash from the firearm as Mr. Mathis fired the shot. Ofc. McKinnon feared for the safety of himself and other deputies on scene, and he returned fire. He said he watched Mr. Mathis slump over the steering wheel and then "everything stopped". Ofc. McKinnon said when he heard the shot and saw the muzzle flash, "It scared the shit out of me." He clarified that he did not actually see the gun, but he did see the muzzle flash and knew it was from the suspect car.

Ofc. McKinnon described himself as familiar with MR. MATHIS. He knew MR. MATHIS was a former deputy who was employed as a Dos Palos police officer. In addition, he knew MR. MATHIS had specialized training on the SWAT team and some military training. Ofc. McKinnon stated he knew if he failed to fire back that a gunfight would happen, putting all officers and deputies in danger.

**f. Summary of Interview with MPD Officer Vince Sapien**

On March 11, 2019, Supervising Investigator Curt Gorman spoke to MPD Ofc. Vince Sapien, who was driving police unit 1443 on February 12, 2019 and had responded to 1891 Lopes Avenue. Ofc. Sapien said he heard the radio call for assistance. As he was nearing the scene, he heard Ofc. McKinnon say on the radio and that he could see MR. MATHIS. Ofc. Sapien had also heard via radio that MR. MATHIS had been firing rounds during the pursuit and while he was in the driveway of 1891 Lopes Avenue. Ofc. Sapien arrived in his vehicle and came to a stop just north of Ofc. McKinnon's vehicle. While he getting out of his car, he heard two shots. He said no more

shots were fired, and he stayed at his car until he was relieved. Ofc. Sapien said he did not take any action at the scene and did not see or know who fired the shots.

#### **g. Summary of Interview with MCSO Sergeant Timothy Goncalves**

On March 18, 2019, Supervising Investigator Curt Gorman spoke to Sgt. Timothy Goncalves who said that he was on duty, working in the jail facility on February 12, 2019. He was called to 1981 Lopes Avenue as part of the SWAT team response. Sgt. Goncalves stated he responded and first took up a position on the perimeter of the scene. He watched as the SWAT robot moved up to the car and viewed the inside of the car where MR. MATHIS was seated with a mounted camera. Through the camera, they did not see any sign of life, such as movement or breathing.

Sgt. Goncalves stated a plan was devised to send three deputies up to the driver's side of the car with a ballistic shield and for Sgt. Goncalves to approach the passenger side at the same time. Sgt. Goncalves reported as he reached the window area of the car, he looked inside and saw MR. MATHIS slumped slightly over the center and toward the passenger side. He did not see any signs of life from MR. MATHIS. As he took a closer look he saw MR. MATHIS' right arm of extended out towards the east which was in the direction of Off. McKinnon's patrol car. Sgt. Goncalves stated a black semi-automatic handgun was in MR. MATHIS' hand. Sgt. Goncalves noted MR. MATHIS' hand was still gripping the gun and his right index finger was still inside the trigger guard and resting on the trigger.

Sgt. Goncalves reached in the car and carefully removed MR. MATHIS'S finger from the trigger and hand from the gun just as the three deputies opened the driver's door and removed MR. MATHIS from the car. He said the team doctor approached MR. MATHIS, checked him for vitals, and declared MR. MATHIS deceased.

#### **h. Summary of Interview with Witness Kathy Mathis**

On February 13, 2019, Supervising Investigator Curt Gorman and Investigator Sheri Carpenter met with Mrs. Kathy Mathis at her home, 1891 Lopes Avenue, Merced. Mrs. Mathis said she and MR. MATHIS separated in December of 2018 and he moved out of the residence at 1891 Lopes Avenue on January 1, 2019. She stated MR. MATHIS did not want to leave, but after talking with some MPD officers who were on the scene for a civil standby, he agreed to leave. Mrs. Mathis reported MR. MATHIS was not dealing well with the separation, but, for their children's sake, they got along. She also said MR. MATHIS was in counseling, and she often encouraged him to work on himself. Mrs. Mathis detailed, since the first of January, MR. MATHIS developed a habit of picking up and dropping off their thirteen-year-old daughter from the house; however, his contact was limited to pulling into the driveway and then leaving.

Mrs. Mathis reported, sometime late last year, MR. MATHIS [REDACTED]

Mrs. Mathis explained that MR. MATHIS does not normally drink, but there were a few times recently when she suspected he might have been drinking. Mrs. Mathis also said that there was not any domestic violence since they parted, but they have had many verbal disagreements over the separation. She stated MR. MATHIS often called, asking for property. Mrs. Mathis' response

most often was to open the garage door for MR. MATHIS. He would pick up whatever he had asked for and then leave without problems. Mrs. Mathis did not fear MR. MATHIS.

On the evening of February 12, 2019, Mrs. Mathis said she spoke to MR. MATHIS on the phone around 7:00 p.m., not long before he appeared at the house. She described him as “not himself”, saying he sounded “strange” on the phone. [REDACTED]

[REDACTED] Mrs. Mathis continued, saying later in the evening she heard sirens outside the house, but at first thought nothing of it. When it sounded to her as though the noise was out front and not moving, she looked outside. She saw MR. MATHIS’ car in the driveway, she heard noise, and she could smell smoke. She also saw deputies outside. She was immediately worried and moved her family to the back of the house for safety, not knowing what might happen. She reported hearing gunshots coming from outside, but she did not know who was shooting. She could not hear anyone talking outside. While she was on the phone with dispatchers, the shooting just stopped. Soon after, deputies came to her back door, and Mrs. Mathis went outside with them. During the time she was waiting, she armed herself because she “did not know what to expect”. Mrs. Mathis learned from the deputies that MR. MATHIS was dead. She then left with her family to stay at a motel for the night.

Mrs. Mathis knew MR. MATHIS owned a Glock 45 caliber handgun. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

#### **i. Summary of Interview with MCSO Lieutenant Chuck Hale**

On March 14, 2019, Supervising Investigator Curt Gorman met with Lt. Chuck Hale at the Merced County Sheriff’s office for an interview. Lt. Hale manages the MCSO detective division. Sgt. Framstad notified Lt. Hale of the shooting involving MR. MATHIS. Lt. Hale informed the rest of the MCSO administrative personnel and responded to the scene.

Lt. Hale was the first of the administrative staff to arrive, followed shortly by Capt. Gibson. They first made sure the scene was secure and everyone was safe. They instructed staff to transport Mrs. Mathis to the main office along with her mom, dad, and daughter. Lt. Hale said after it was confirmed MR. MATHIS was dead, he and Capt. Gibson met with Mrs. Mathis at the main office to give her and the family the death notification. Lt. Hale stated, after delivering the news to Mrs. Mathis, she began to talk with him and Capt. Gibson.

After some awkward silence, Mrs. Mathis began to detail some of the things MR. MATHIS had been doing since they separated. She described an incident at Atwater PD while she was on duty as a dispatcher when MR. MATHIS caused a problem and disturbance. Lt. Hale reported Mrs. Mathis’s mom, [REDACTED], was present during the conversation. She told them she feared for Mrs. Mathis. [REDACTED]

[REDACTED] He also called Mrs. Mathis, making unspecified threats to her. During the conversation, Lt. Hale learned MR. MATHIS was recently living with a friend in town, but the address was unknown. After a brief period, Lt. Hale transported Mrs. Mathis and her family to a hotel because they knew the house would not be available for the night.

Lt. Hale also remembered that on the evening of the shooting, when Mrs. Mathis called dispatch, she told them MR. MATHIS was exchanging gunfire with the police.

**j. Summary of Interview with MCSO Captain Corey Gibson**

On March 18, 2019, Supervising Investigator Curt Gorman spoke to MCSO Capt. Corey Gibson who said he was present with Lt. Hale when Mrs. Mathis disclosed to them the ongoing problems she experienced with MR. MATHIS. Mrs. Mathis told them she was living in fear for the last couple of months. She also said she thought MR. MATHIS [REDACTED] along with a consuming alcohol. Capt. Gibson reported Mrs. Mathis' mom, [REDACTED], told him and Lt. Hale about problems while MR. MATHIS lived at 1981 Lopes Avenue. [REDACTED]

During the same conversation Mrs. Mathis told Capt. Gibson and Lt. Hale MR. MATHIS called all three of his kids that evening. [REDACTED]

[REDACTED] Mrs. Mathis said when MR. MATHIS crashed into the house, she armed herself because she feared what might happen. Gibson distinctly remembered that Mrs. Mathis told dispatch, "Johnny is exchanging gunfire with the police." Gibson said that was all he could remember.

Note: Supervisor Gorman attempted to speak with the other family members present in the home the night of the incident, but all refused.

**VI. SEARCH WARRANT**

At the time of the shooting, MR. MATHIS was staying at [REDACTED] Merced, California with a roommate. A search warrant was served at this location for any evidence related to the incident.



The search warrant served at [REDACTED] Merced, CA. [REDACTED]

[REDACTED]


## **VII. VIDEOS**

The law enforcement officers listed below were on scene when the shooting took place. The times are reflected in Pacific Standard Time. Please note the AXON camera's timestamps utilize Zulu Time. Under Coordinated Universal Time (UTC), Zulu or "Z" refers to UTC minus zero hours. Eight hours must be deducted from Zulu Time to show Pacific Standard Time. Deputy Sohal, Deputy Hawkins and Officer McKinnon's BWC all synchronized to within 1/10<sup>th</sup> to 5/10<sup>th</sup> of a second apart. Sgt Framstad's BWC synchronization was 24 seconds late. No explanation for the delay was provided or determined.

MCSO Deputy Sohal was issued and operated an AXON FELX 2 BWC Serial # X81350448.  
MCSO Deputy Hawkins was issued and operated an AXON FLEX 2 BWC Serial # X81115166.  
MCSO Sgt Framstad was issued and operated an AXON FLEX 2 BWC Serial # X81117563.  
MPD Officer McKinnon was issued and operated an AXON FLEX 2 BWC Serial # X83047078.  
MPD Officer Sapient did not activate his BWC.

Note: The body worn camera (BWC) assigned to Officer McKinnon is serial number # X83047078. This was confirmed by Merced Police Department Lt. Struble. Lt. Struble explained that Det. Haygood uploaded the video manually therefore his name appears on the video, however the camera is worn by and depicts Officer McKinnon's actions.

### **a. Summary of Times from Deputy Sohal's Body Worn Camera**

At 7:53:57 p.m. – Deputy Sohal made first contact with MR. MATHIS standing by his vehicle on the side of the road. The pursuit began shortly after this initial contact. Deputy Hawkins joined the pursuit as the secondary unit and began to call out the direction of travel and speed of the pursuit.

At 7:55:22 p.m. – MR. MATHIS fired the first shot into the air and Deputy Sohal radioed this information immediately.

At 7:57:21 p.m. – Sgt Framstad stated via radio that he planned to attempt to place spike strips from a side street. Deputy Sohal replied via radio back to Sgt. Framstad to be careful because MR. MATHIS he had already fired one shot.

At 7:58:10 p.m. – 2 to 3 shots were fired and are audible on the recording. Deputy Sohal stated, “Oh shit,” in response. Deputy Sohal also began to breathe faster, indicating a higher degree of alertness and adrenaline.

At 7:59:03 p.m. – Deputy Sohal radioed that MR. MATHIS was stopping and called out the location as 1891 Lopes Ave.

At 7:59:38 p.m. – MR. MATHIS fired a third set of shots, which on audio is captured as approximately 4 to 5 shots. Simultaneously, MR. MATHIS was attempting to drive into the garage by accelerating the vehicle and causing the tires to spin and smoke.

At 8:00:27 p.m. – MR. MATHIS fired one shot and Deputy Sohal called this out. Ofc. McKinnon has arrived on the scene, and his vehicle is in view. It appears that Ofc. McKinnon and Dep. Sohal are within a car-length of each other.

At 8:00:42 p.m. – Deputy Sohal spoke and reported hearing sounds indicating MR. MATHIS was reloading or grabbing another weapon.

At 8:00:49 p.m. – Audio captured Ofc. McKinnon’s voice saying he has him (MR. MATHIS) in the front seat and he can see him.

At 8:00:58 p.m. – MR. MATHIS fired one shot. The shot hit Ofc. McKinnon’s police vehicle.

At 8:00:59 p.m. – Ofc. McKinnon fired a shot from his rifle, striking MR. MATHIS in the head. After the shot fired by Officer McKinnon, audio captured Ofc. McKinnon reporting that MR. MATHIS was slumped over. Steam then emitted from Ofc. McKinnon’s patrol vehicle.

#### **b. MCSO Deputy Sohal’s Body Camera**

Deputy Sohal’s body camera began from the point of contact with MR. MATHIS on Hwy. 140. As Sohal approached MR. MATHIS he observed the broken window on the rear driver’s side. There is a brief delay before the sound starts, then Dep. Sohal asks MR. MATHIS if he is okay. MR. MATHIS says that he is okay. MR. MATHIS shows symptoms of intoxication such as unsteady balance, slurred speech, slowed responses. MR. MATHIS sits in his car, and Dep. Sohal tells him not to leave. MR. MATHIS drives away and the pursuit starts. During the pursuit, Dep. Sohal calls out “shots fired” two times but the shots are not audible in the footage. The positioning of Dep. Sohal’s BWC on his body prevents observation of the pursuit. When MR. MATHIS stops in the driveway of 1891 Lopes Avenue, Dep. Sohal exits his patrol car. The footage shows MR. MATHIS has crashed into the garage door and is spinning the tires of the Kia. Dep. Sohal’s breathing and speech become rapid. Both changes reflect Dep. Sohal’s increased alertness and adrenaline levels. Gunfire is audible three times while MR. MATHIS is in the driveway of 1891

Lopes Avenue. At 7:59:38 p.m., approximately 4 shots are heard. Then, a single shot is fired at 8:00:26 p.m. The last two shots captured by the BWC occur at 8:00:58 p.m. As the last shots are fired, Dep. Sohal is positioned to the left of Ofc. McKinnon's patrol vehicle. At 8:00:56 p.m., he has a clear view of the Kia. Following the shots fired at 8:00:58 p.m., Dep. Sohal's view of the Kia is increasingly obstructed due to smoke or steam is rising from Ofc. McKinnon's patrol vehicle. Ultimately, the smoke from the vehicle hampers his view so much he is forced to shift to a new position. As he leaves, he comments, "I can't see anything behind this car."

A captured still from Dep. Sohal's BWC showing the video's first clear view of MR. MATHIS' vehicle after it came a stop in the driveway:



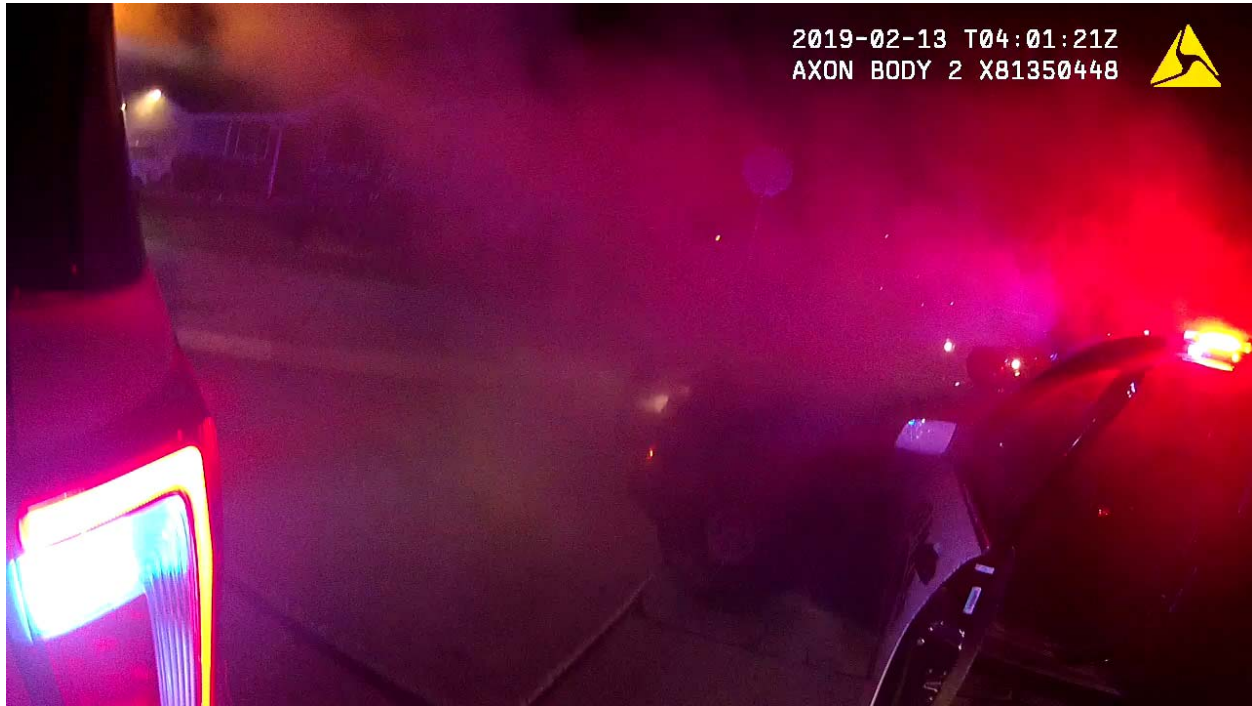
A captured still from Dep. Sohal's BWC showing the front of Ofc. McKinnon's patrol vehicle in the seconds before the last two shots were fired:



A captured still from Dep. Sohal's BWC showing the front of Ofc. McKinnon's patrol vehicle 15 to 16 seconds after the last two shots were fired:



A captured still from Dep. Sohal's BWC showing the front of Ofc. McKinnon's patrol vehicle 23 to 24 seconds after the last two shots were fired:



**c. MCSO Deputy Hawkins Body Camera**

Dep. Hawkins activated his body camera as he exited his patrol car at 1981 Lopes Avenue. The first images show MR. MATHIS' car crashed into the garage door, with the tires spinning and smoke rising. Dep. Hawkins calls out to MR. MATHIS, and then shots are fired. Dep. Hawkins calls out again to MR. MATHIS, telling him to "calm down" and explaining they are there to help him. A single shot discharges as Dep. Hawkins moves to a safer position. About 30 seconds later, the audio captures two shots fired in quick succession. After that, no further movement emits from or near the vehicle and no additional shots are heard.

A captured still from Dep. Hawkins BWC when he first arrived on scene:



**d. MCSO Sergeant Framstad's Body Worn Camera**

Sgt. Framstad activated his BWC after he arrived on scene. The position of Sgt. Framstad's BWC does not permit a clear view of the scene. However, the audio captures a single shot. Approximately thirty seconds pass, and then two shots are heard in quick succession.

A captured still from Sgt. Framstad's BWC when he first arrived on scene:



**e. MPD Officer McKinnon's Body Camera**

Due to the positioning of Ofc. McKinnon's BWC, the images do not show the suspect car or the scene at 1981 Lopes Avenue. However, the audio is reflective of the events. As the video starts, Ofc. McKinnon says he can see MR. MATHIS in the front seat. Next, a shot registers on the audio, and Ofc. McKinnon fires one return shot at 8:00:59 p.m. Ofc. McKinnon then calls out, "Shots fired by the police; he's slumped over." Ofc. McKinnon's rifle shot is the last shot fired during the incident.

A captured still from Ofc. McKinnon's BWC camera when it was first activated as he arrived on scene:



A captured still from Ofc. McKinnon's BWC near the time when he reported he could see MR. MATHIS:



**f. Additional MPD Officers' Body Cameras**

MPD Officers Dejong, Benevides, Dehoyos, Gallegos, Garcia, Provostini, Saelee and Wilkins all responded, but arrived after the shooting occurred. None of them participated in the pursuit. They each remained on scene until relieved. Their BWCs were reviewed but did not contain evidence material to the investigation.

**g. MPD Officer McKinnon's Patrol Vehicle Camera**

The vehicle camera in Ofc. McKinnon's patrol vehicle began as Ofc. McKinnon left the Merced Police Department on G Street. Ofc. McKinnon arrived at the scene immediately behind a MCSO patrol vehicle. MR. MATHIS had just rammed the garage door of the residence at 1981 Lopes Avenue. The video quality is poorer than the BWC footage, but the vehicle camera captured the scene as it unfolded around MR. MATHIS vehicle from Ofc. McKinnon's arrival until 12:23:02 a.m. on February 13, 2019. The vehicle camera shows the vehicle smoking or emitting steam in the moments following the last shots. The footage also shows Sgt. Goncalves approaching the front passenger door of the vehicle as other members of the SWAT team approached on the driver's side of the vehicle. Sgt. Goncalves reaches into the vehicle before the larger SWAT group arrives at the driver's door.

A captured still from Ofc. McKinnon's vehicle camera in the moments before he parked and before the tires on MR. MATHIS' Kia began to smoke:



A captured still from Ofc. McKinnon's vehicle camera at the moment a volley of four shots were fired from within the Kia. For an unknown reason, light shines from within the vehicle for a brief time at that moment, but smoke later obscured it and/or it stopped:



A captured still from Ofc. McKinnon's vehicle camera approximately twenty-five seconds after the last shots were fired. Smoke or steam comes from the vehicle:



A captured still from Ofc. McKinnon's vehicle camera just over a minute-and-a-half after the last two shots were fired. Smoke or steam continues to rise from the vehicle:



A captured still from Ofc. McKinnon's vehicle camera shows Sgt. Goncalves reaching into the front passenger window of the Kia as other SWAT team members approach the driver's door:



**h. Witness ██████████'s Personal Cell Phone Video**

██████████ submitted a copy of his personal cell phone video to the DA Bureau of Investigations. ██████████ participated in a civilian ride-a-long on February 12, 2019 with Dep. Sohal. The video begins with Dep. Sohal standing at the rear of a vehicle near the suspect vehicle. Shots are fired and the audio captures deputies calling out to the suspect, trying to de-escalate the situation. A deputy tells Mr. Mathis to calm down.

**i. Media-Published Videos**

Several cellular phone recordings were placed into evidence, taken from posts to the Merced-Sun-Star and Merced Gateway News websites. Citizens in the area recorded videos and posted the videos online. The recordings depict the scene and deputies attempting to make contact with MR. MATHIS.

## **VIII. CELLULAR PHONE DATA**

MR. MATHIS' cellular phone was taken as evidence. His iPhone was a new model, and it was passcode locked. Data from his phone has not been retrievable thus far. It may be several months before software is available to retrieve this data.

## **IX. AUTOPSY AND TOXICOLOGY**

### **A. Autopsy**

Merced County Coroners case #19-7517

The autopsy was performed by Dr. Mark A. Super MD on February 13, 2019 at 10:00 a.m. Dr. Super determined a high velocity gunshot wound to the head caused Johnny Cornell MR. MATHIS' death. The date and time of death was documented as February 12, 2019 at 9:57 p.m. Deputy Coroner J. Arguelles called Dr. Super to the scene. Dr. Super arrived on scene at 4:30 a.m. on February 13, 2019. His observations upon arrival follow:

On the early morning of 02/13/18 I was called at home by Deputy Coroner J. Arguelles requesting that I respond to the scene of an officer involved shooting in south Merced. I left my home at 04:20 and arrived at the scene at 04:30, which, was at 1841 Lopes Avenue. I was met by Sergeant Foster, Merced Police Department who walked me over to the scene, which consisted of a white automobile that was in the driveway of the residence. The car had smashed into and severely dented the garage door, which was down. The body of an adult white male was lying supine on the cement driveway just outside the open driver's door. The decedent was dressed as described below. He was lying with his arms and legs outstretched. I examined the body at 04:40 and found the skin surfaces to be palpably cool, with rigor present but breakable. Lividity was difficult to assess. The face was covered by dried bloodstains emanating from about the nose. On closer examination, I detected a small sized gunshot entrance wound on the right side of the nasal bridge within the right medial canthal area. No exit wound was seen. The decedent was bald and the scalp was free of any significant injuries. No gunpowder stippling was visible about the entrance wound on the nose. I opined that this wound was more consistent with a high-velocity small-caliber sized round rather than a large-caliber handgun round from the gun that the decedent was reported to be handling.

The autopsy report makes the following findings:

1. High velocity gunshot wound of head:
  - a. Indeterminate range-type entrance wound, right medial canthal area/nose.
  - b. Perforation of right bony orbit and facial sinuses.
  - c. Impact fractures of basilar skull, from below, especially left petrous bone.
  - d. Acute subarachnoid hemorrhage, base of brain and within foramen magnum.

- e. Fragments of copper-colored bullet jacketing material recovered from wound path.
- f. Wound path: front to back, slightly downward, and very slightly right to left.



### **1. Cause of Death: High Velocity Gunshot Wound of Head**

Dr. Super described the fatal wound in the following text:

**Gunshot wound of head:** On the medial aspect of the right side of the nose just below the right medial canthus is a gunshot wound of entrance, situated 1.5 cm to the right of mid-face, 14.5 cm from the top of the head. The wound consists of a 0.4 cm ovoid hole with a wide eccentric marginal abrasion along the anterior/medial edge. Three short tears up to 0.4 cm long radiate upward and laterally from the edges at the 9 and 12 o'clock positions. No soot deposition, gunpowder stippling or muzzle imprint is seen. The wound path perforates the skin and subcutis of the lower medial right orbital area. The wound path perforates the inferior/medial aspect of the right orbit and all the ethmoid sinuses coursing slightly downward and slightly to the left. The wound path impacts the undersurface of the basilar skull resulting in comminuted fractures of both petrous bones and the clivus, with hairline fractures that course upward and forward into the cribriform plate, laterally up through the squamous portion of the left petrous bone onto the left parietal skull, and backward from both sides of the foramen magnum onto the right and left posterior cranial fossa. The deep soft tissues of the undersurface of the skull and the left side of the neck are expanded by fresh hemorrhage. A tiny fragment of copper-colored jacketing and a larger deformed portion of copper-colored jacketing that includes the base are recovered from the wound path. The larger portion of jacketing is found embedded in the undersurface of the left petrous bone where there are comminuted fractures. The subarachnoid space at the base of the brain and within the foramen magnum is expanded by fresh hemorrhage, which extends onto the undersurface of both temporal lobes. The path of the wound is oriented front to back, slightly downward at approximately 20 degrees, and very slightly right to left at approximately 10-20 degrees.

### **B. Blood Alcohol and Toxicology**

Central Valley Toxicology Criminalist B.L. Posey analyzed the samples collected during MR. MATHIS' autopsy. His report, dated February 20, 2019, states ethyl alcohol and [REDACTED] were present in Mr. Mathis' system. Criminalist Posey tested MR. MATHIS' blood alcohol content in samples of blood, urine, and vitreous. The levels were determined to be 0.20 grams%, 0.15 grams%, and 0.17 grams% respectively. [REDACTED]

[REDACTED]

## VI. CONTACTS WITH LAW ENFORCEMENT

The Merced County District Attorney's Office records reflect a series of domestic violence offenses, related to battery and violation of a court order took place in October of 1992. MR. MATHIS successfully completed a diversion program, and the misdemeanor charges were dismissed. The incidents were reported to the Merced Police Department, and all records describing the incidents have since been purged from both MPD and the District Attorney's Office.

[REDACTED]

[REDACTED]

[REDACTED] The investigation was presented to the Merced County District Attorney's Office, and the District Attorney's Office filed a criminal complaint on June 8, 2010, alleging misdemeanor domestic violence conduct. The criminal case resulted in a negotiated dismissal on April 13, 2011. District Attorney records are silent regarding the reason for the dismissal. [REDACTED]

[REDACTED]

[REDACTED]

On October 28, 2011, the Merced Police Department completed a report indicating MR. MATHIS violated Penal Code, Section 415. MR. MATHIS engaged in a verbal confrontation with on-duty Officer Cruz Jasso. The incident occurred at the main gate to the Merced County Fairgrounds. Several other on-duty MPD officers were present. MR. MATHIS was accused of using words in a threatening manner toward Ofc. Jasso. MR. MATHIS refused to cooperate with the investigation. The incident was investigated by MPD and submitted to the Merced County DA's office. The District Attorney's Office refused the case for lack of evidence. [REDACTED]

[REDACTED]

The report was forwarded to the District Attorney's Office for review, but the filing of a criminal complaint was rejected due to lack of evidence. [REDACTED]

On November 6, 2018, the Merced Police Department received a call from MR. MATHIS' son, requesting an officer to perform a welfare check on his father. He said [REDACTED] he was worried. MPD sent an officer to check and was already on scene when MR. MATHIS' son called back and asked MPD to cancel the response. Officers had already made contact. MR. MATHIS told them he [REDACTED] did not know why his son called the police. [REDACTED]

On December 30, 2018 at 3:00 a.m., MR. MATHIS arrived at the Atwater Police Department. Mrs. Mathis was on-duty as a dispatcher for APD. [REDACTED] He attempted to contact Mrs. Mathis while she was working. He disrupted Mrs. Mathis by repeatedly calling her cellular phone, while walking throughout the lobby of the police department and making noise to get someone's attention. Mrs. Mathis spoke to Ofc. Wisdom, stating MR. MATHIS' behavior frightened her and she was concerned for her daughter. Ofc. Wisdom contacted Sgt. Snyder who was on his way to the department to handle the situation. Sgt.

Snyder approved as a safety precaution that Ofc. Wisdom travel to Mrs. Mathis' residence to pick up her daughter. When reporting the incident, Ofc. Wisdom documented that Sgt. Snyder notified MPD for a civil stand-by. Mrs. Mathis' daughter was safely transported to APD per her request.

In addition to Ofc. Wisdom's report, Sgt. Snyder prepared an office memorandum directed to APD Chief Bessinger. In the memo, Sgt. Snyder described the incident involving MR. MATHIS and Mrs. Mathis. He noted MR. MATHIS had come to APD to contact Mrs. Mathis, disrupting her duty as a dispatcher. Sgt. Snyder indicated he spoke with Mrs. Mathis first and then spoke with MR. MATHIS. Sgt. Snyder reported he intentionally brought another officer to stand by with him when he approached MR. MATHIS [REDACTED] MR. MATHIS told Sgt. Snyder he wanted to make a complaint about other officers having an affair with his wife because it had ruined his marriage. He said he wanted his wife fired. Sgt. Snyder accepted the complaint; however, MR. MATHIS called later, asking to retract his complaint because it would do more harm than good to his marriage. [REDACTED]

On January 4, 2019, MPD completed a miscellaneous services report at 12:31 a.m. Ofc. Arias responded to 1891 Lopes Avenue, Merced because Mrs. Mathis was calling for assistance. Mrs. Mathis indicated MR. MATHIS left the residence two days earlier on January 2, 2019, but he was attempting to gain entry to the residence. Ofc. Arias described MR. MATHIS as uncooperative and passive-aggressive. MR. MATHIS initially refused to leave the property. Ofc. Arias described MR. MATHIS as confrontational and argumentative, reporting that MR. MATHIS threatened him. MR. MATHIS told Ofc. Arias, if it were not for the badge, he would kick his ass. Ofc. Arias' BWC recorded the confrontation. Sgt. Horn also responded to the home in an attempt to de-escalate the situation.

Merced Police Department discussed the January 4, 2019 incident internally. In response, Sgt. Solis read a watch report to his team and they watched the BWC footage of the January 4, 2019 incident at 1981 Lopes Avenue, involving MR. MATHIS and his conduct with Ofc. Arias and Sgt. Horn. Sgt. Solis wanted his officers to be aware that MR. MATHIS was confrontational. He also instructed them to respond with two officers when they received calls for service from the Lopes address. No other MPD contacts with MR. MATHIS occurred before February 12, 2019, and Sgt. Solis did not mention MR. MATHIS during a team briefing again.

## **VII. APPLICABLE LAW**

California Penal Code, Section 196 details the circumstances when a public officer's intentional killing of another is justified. CALCRIM 507, a jury instruction, uses plain language to describe the elements of Penal Code, Section 196, stating:

. . . if he killed someone while acting as a public officer. . . [s]uch a killing is justified, and therefore not unlawful, if:

1. The [person who killed another] was a public officer;
2. The killing was committed while overcoming actual resistance to some legal process or while performing any other legal duty;
3. The killing was necessary to accomplish one of those lawful purposes;

AND

4. The [public officer] had probable cause to believe that the decedent posed a threat of death or great bodily injury, either to the [public officer] or to others or that [the decedent] had committed (*insert applicable crime here*) and that crime threatened the [public officer] or others with death or great bodily injury.

A person has *probable cause* to believe that someone poses a threat of death or great bodily injury when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.

\* \* \*

Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

The People have the burden of proving beyond a reasonable doubt that the killing was not justified. If the People have not met this burden, [a jury] must find the [public officer] not guilty of murder or manslaughter. (*As was intended by the authors, the language above was modified or removed to correspond to the circumstances of this case. Changes are shown in [brackets]. The full text of CALCRIM 507 is attached in the appendix.*)

A peace officer who has reasonable cause to believe a person has committed a public offense or is a danger to others may use reasonable force to detain or arrest the person, to prevent the person's escape, or to overcome the person's resistance. (California Penal Code, Section 835a; CALCRIM 2670.) An officer who detains or arrests a person does not need to retreat or stop his or her efforts if the person resists or threatens resistance. Moreover, using reasonable force does not make the officer an aggressor or cause him or her to lose the right to self-defense. (California Penal Code, Section 835a.) The person being detained or arrested has a duty to permit himself or herself to be detained, and the person must refrain from using force or any weapon to resist arrest. (People v. Allen (1980) 109 Cal.App.3d 981, 985; California Penal Code, Section 834a; CALCRIM 2670, 2671, 2672.)

A peace officer may use deadly force under circumstances where it is reasonably necessary for self-defense or defense of another. (California Penal Code, Sections, 196 and 197.) California law permits the use of deadly force if the person actually and reasonable believed he/she or another was in imminent danger of death or great bodily injury. It is the reasonable appearance of danger to the officer and his/her honest belief in that danger which is controlling. If an officer actually believes that deadly force is necessary and that belief is reasonable under the circumstances, the officer's actions are lawful even if it is later determined that the danger did not actually exist. (CALCRIM 505, 507; People v. Toledo (1948) 85 Cal.App.2d 577; People v. Jackson (1965) 233 Cal.App.2d 639.) Further, the officer need not prove that he/she had the right to use deadly force. Rather, it is the prosecution which must prove that the officer did not have that right. The question

then becomes whether the evidence proves, beyond a reasonable doubt, that Officer McKinnon did not have an honest, reasonable belief that he, fellow officers and deputies, or the occupants of the residence were in imminent danger of death or great bodily injury.

## **VIII. APPLICATION OF THE LAW WITH THE FACTS**

At 7:53:57 p.m. on February 12, 2019, Dep. Sohal contacted an individual at the 2100 block of Hwy. 40 in response to a call of screaming coming from a car. He recognized the individual as MR. MATHIS, a person known to him as a peace officer. Dep. Sohal observed a shattered window in the vehicle and MR. MATHIS displayed obvious signs of intoxication, including slurred speech, delayed responses, and severe balance problems. MR. MATHIS failed to appropriately respond to questions. More than once, Dep. Sohal clearly ordered MR. MATHIS not to leave the scene after MR. MATHIS sat down in the driver's seat of the vehicle. MR. MATHIS gave no verbal response and disregarded Dep. Sohal's orders by driving away toward the City of Merced.

At the time MR. MATHIS drove away from Dep. Sohal, probable cause for arrest due to the following law violations was present and/or there was sufficient evidence to justify further investigation of: 1) Vehicle Code, Section 23152, Driving a car while under the influence of alcohol, a misdemeanor punishable by a term in county jail; and 2) Penal Code, Section 148, Resisting, delaying or obstructing an officer: a misdemeanor punishable by a term in county jail.

Dep. Sohal, in his marked patrol vehicle, immediately activated the lights and siren and pursued MR. MATHIS. At 7:55:22 p.m. while driving on Hwy. 140, MR. MATHIS held his left hand outside the driver's window of his car and fired a handgun into the air. The pursuit was traveling at approximately 25 to 30 miles per hour. At 7:58:10 p.m., while traveling at approximately 15 miles per hour eastbound on Lopes Avenue, MR. MATHIS again extended his hand out the window of his vehicle, this time firing two to three shots.

At this point, probable cause for the following law violations was created: 3) Penal Code, Section 26100(d), Discharge of a firearm from a vehicle, a felony or misdemeanor punishable by a maximum of three years in state prison; and 4) Penal Code, Section 246.3, Negligent discharge of a firearm, a felony or misdemeanor punishable by a maximum of three years in local prison.

As Dep. Sohal followed MR. MATHIS' car, Dep. Hawkins and Sgt. Framstad joined the pursuit. As they entered the City of Merced, the incident was relayed by radio to Merced Police Department. At no time, did MR. MATHIS yield to the Sheriff's Office' patrol cars following him.

Probable cause was present for 5) Vehicle Code section 2800.1, Flight from pursuing officer, a misdemeanor punishable by a term in county jail.

At 7:59:03 p.m. when MR. MATHIS reached the address of 1891 Lopes Avenue, he drove into the garage door of the residence, in an apparent attempt to gain forcible entry to the house through the garage. Had a person been standing inside the garage door near the door, they would most

likely have been severely injured or killed. A parked car inside the garage prevented MR. MATHIS from entering the garage.

Probable cause was available for 6) Penal Code, Section 594, Vandalism, a felony since the value of the damage to the property, including damage to the parked car, was likely greater than \$400, punishable by a maximum of three years in local prison.

Seven shots were fired by MR. MATHIS into the Lopes Avenue residence. In addition, three slugs were fired into the passenger compartment, generally toward the glove box of the Kia. The precise timing for each shot is unknown. However, at 7:59:38 a volley of approximately four shots emitted from Mr. Mathis' vehicle. At that point, Merced Police Officer McKinnon had arrived at the scene. The volley of shots was captured on his vehicle camera, but his BWC was not yet activated. Ofc. McKinnon reported he heard multiple shots from MR. MATHIS' car, while he exited his patrol car.

The volley of shooting established probable cause for: 7) Penal Code, Section 246, Shooting at an inhabited dwelling, a felony punishable by a maximum of seven years in state prison; and 8) another violation of Penal Code, Section 246.3, Negligent discharge of a firearm, a felony or misdemeanor punishable by a maximum of three years in local prison.

From 7:59:03 p.m., the time Dep. Sohal radioed that MR. MATHIS was stopping at the residence on Lopes Avenue, at least two Sheriff's Deputies, Dep. Sohal and Dep. Hawkins, called out to MR. MATHIS, giving verbal commands and attempting to calm him. However, MR. MATHIS never responded. Instead, MR. MATHIS accelerated his vehicle in to the garage door, smoking the tires of his vehicle and making it difficult for the deputies to see into his car. As described above, MR. MATHIS also sporadically fired multiple shots from and within the vehicle.

At this point, generally the moments when Ofc. McKinnon was arming himself and sheltering behind the opened passenger door of his patrol vehicle: 1) MR. MATHIS had actually resisted detention and arrest by leaving the scene against a deputy's orders, 2) MR. MATHIS had committed at least seven or eight law violations in the presence of deputies, among them some felony offenses that gravely risked the safety of the deputies, the residents of the Lopes Avenue home, and the community, 3) MR. MATHIS was refusing to communicate with deputies or comply with their instructions, 4) MR. MATHIS continued to risk grave injury or death to the deputies, officers, residents of the home, and community by discharging his weapon in unexpected and apparently random ways, and 5) all of the deputies and officers at the scene had a duty to eliminate the severe threat to the safety of themselves and others presented by MR. MATHIS and to arrest him. Officer McKinnon was lawfully authorized to use lethal force to detain or arrest MR. MATHIS at this point.

At 8:00:27 p.m., MR. MATHIS fired a shot single shot. At 8:00:42 p.m., Dep. Sohal radioed that MR. MATHIS was either locating another weapon or reloading. At 8:00:49 p.m., Ofc. McKinnon announced that MR. MATHIS was in the front seat of the Kia and Ofc. McKinnon could see him. At 8:00:58 p.m., MR. MATHIS fired a single shot that hit the grill of Ofc. McKinnon's patrol vehicle near mid-line. While looking at MR. MATHIS through the scope of his rifle, Ofc.

McKinnon saw the muzzle flash at the same time he heard the shot fired. At 8:00:59 p.m., Ofc. McKinnon returned MR. MATHIS' fire, shooting a single round. The bullet struck MR. MATHIS in the head, and MR. MATHIS died instantly.

When the shot was fired toward Ofc. McKinnon, he was surrounded by other officers and deputies who had formed an enforcement perimeter around the residence. The shot fired by MR. MATHIS struck a point approximately four feet away from Ofc. McKinnon, and MR. MATHIS was only 75 to 80 feet away from Ofc. McKinnon at that time. Ofc. McKinnon had already located MR. MATHIS in the optics of his rifle. Ofc. McKinnon was the only officer on scene who had the vantage point and the equipment that permitted him to see MR. MATHIS clearly. Ofc. McKinnon stated he knew MR. MATHIS was a former deputy who was employed as a Dos Palos police officer. He also knew MR. MATHIS had specialized training and experience on the SWAT team as well as some military training. This knowledge together with the circumstances at the scene informed Ofc. McKinnon's assessments and decisions. Ofc. McKinnon reported when he heard the shot and saw the muzzle flash, "It scared the shit out of me." He said he was worried about his own safety and that of the other deputies and officers. He also believed that a failure to respond with lethal force would expose all of the people present to a greater likelihood of a gun battle taking place.

Ofc. McKinnon was in actual fear for himself and for others. Based upon the circumstances at the time he fired his weapon, his fear was not only actual, it was reasonable. Ofc. McKinnon acted in performance of his duty as a police officer, while combatting an assailant who was using lethal force against Ofc. McKinnon and others. There is no question that the shooting in this case was justified.

## **IX. CONCLUSION**

In the span of seven minutes, a suspicious vehicle call turned into a suspected driving under the influence pursuit and lethal shooting. Based upon review of Dep. Sohal's body worn camera, the amount of time between Dep. Sohal calling out that MR. MATHIS was stopping at the Lopes Avenue residence and the final shot fired by Ofc. McKinnon was only one minute and 56 seconds. The deputies and officers responding to this incident were given only seconds to assess the situation and act appropriately. In addition, because the response was a joint response from two separate law enforcement offices, they were required to act in concert with partners with whom they were unfamiliar and did not share radio contact. In a situation with poor lighting, obscured vision, and obvious lethality, the only officer who fired his weapon was the one who had the viewpoint and equipment to determine conclusively that the weapon's discharge by MR. MATHIS had become a directed attack. The potentials for grave harm in this case were numerous, yet the only fatality was to the assailant and the only round fired by law enforcement was the fatal shot. The thoroughness of the training received by the responding deputies and officers is evident when reviewing this incident.

Based on an assessment of the evidence, including the statements of the parties involved; the video, audio, and written records; the autopsy and toxicology reports; the crime scene documentation;

and all evidence obtained during the investigation, it is the conclusion of Merced County District Attorney's Office that:

1. Officer Nate McKinnon was a public officer engaged in the duties of his position on the evening of February 12, 2019;
2. Ofc. McKinnon acted against the actual resistance of Johnny MATHIS and to protect the safety and lives of himself, the residents of the home at 1891 Lopes Avenue in Merced, his fellow officers, and nearby citizens;
3. The shooting death of MR. MATHIS was necessary to overcome his resistance to the officer and to protect the safety of the officer and others; and
4. Ofc McKinnon had probable cause to believe that MR. MATHIS posed a threat of death or great bodily injury to himself and others, and Ofc. McKinnon's sustained fear of MR. MATHIS was both actual and reasonable.

The shooting death of Johnny MATHIS was lawful and justifiable. The District Attorney's Office will take no further action in this matter other than to commend the officers and deputies who responded to this incident for their discipline and composure.

## APPENDIX

### CALCRIM 507

#### Full Text

The defendant is not guilty of [murder/manslaughter (attempted)] if [he/she] [killed/attempted to kill] someone while \*[acting as a public officer]\*\*[obeying a public officer's command for aid and assistance]\*. Such a[n][attempted] killing is justified, and therefore not unlawful, if:

1. The defendant was \*[a public officer]\*\*[obeying a public officer's command for aid and assistance]\*;

2. The [attempted] killing was committed \*[while taking back into custody [the/a] convicted felon[s] who had escaped from prison or confinement]\*\*[while arresting a person[s] charged with a felony who [was/were] resisting arrest or fleeing from justice]\*\*[while overcoming actual resistance to some legal process]\*\*[ [or] while performing any [other] legal duty]\*;

3. The [attempted] killing was necessary to accomplish [one of those/that] lawful purpose[s];

AND

4. The defendant had probable cause to believe that \_\_\_\_\_ posed a threat of death or great bodily injury, either to the defendant or to others\*[ or that \_\_\_\_\_ had committed \_\_\_\_\_]\* and that crime threatened the defendant or others with death or great bodily injury.

A person has *probable cause* to believe that someone poses a threat of death or great bodily injury when facts known to the person would persuade someone of reasonable caution that the other person is going to cause death or great bodily injury to another.

\*[An officer or employee of \_\_\_\_\_ is a public officer.

] \*Great bodily injury means significant or substantial physical injury. It is an injury that is greater than minor or moderate harm.

The People have the burden of proving beyond a reasonable doubt that the [attempted] killing was not justified. If the People have not met this burden, you must find the defendant not guilty of [attempted][murder/manslaughter].